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THE CHARLES R. DREW UNIVERSITY
OF MEDICINE & SCIENCE

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

THE CHARLES R. DREW UNIVERSITY OF
MEDICINE & SCIENCE, a California Non-
Profit Corporation

Plaintiff,

v.

THE COUNTY OF LOS ANGELES, a
California Governmental Entity, and DOES 1
through 100, inclusive,

Defendants.

CASE NO.

COMPLAINT FOR:

- (1) BREACH OF WRITTEN
CONTRACT;**
- (2) BREACH OF IMPLIED-IN-FACT
CONTRACT; AND**
- (3) BREACH OF THE COVENANT
OF GOOD FAITH AND FAIR
DEALING**

DEMAND FOR JURY TRIAL

INTRODUCTION

1. Plaintiff The Charles R. Drew University of Medicine & Science (“The Charles Drew University”) is a private, non-profit educational institution located in the Watts-Willowbrook area of South Los Angeles. It was first mooted in 1961, incorporated in 1966, and since 1972 The Charles Drew University has provided quality college, graduate, and post-graduate education and training to thousands of qualified minority and other students, and has provided urgently-needed healthcare services to over four million chronically underserved residents of the poorest community in Los Angeles County. The Charles Drew University’s stated mission is to “conduct education and research in the context of community service in order to train physicians and allied health professionals to provide care with excellence and compassion, especially to underserved populations.”

2. The University was founded in the wake of the Watts Rebellion in 1965 in which 34 people died and over 1,000 were injured. At that time, the celebrated McCone Commission, after carefully studying the massive civil disturbances, issued a comprehensive report on what it called the “Watts Riots” that found, among other things, that the Rebellion was in many ways a response to the deplorable health conditions of the “relatively poor” residents of south central Los Angeles. As the McCone Commission stressed, in that area, “facilities to provide medical care are insufficient,” and “the number of doctors . . . is grossly inadequate as compared with other parts of the city.” In light of these deplorable conditions, and because LA County General Hospital and Harbor General “are both distant and difficult to reach,” the Commission urged immediate construction of “a new, comprehensively equipped hospital in this are . . .” The following year, 1966, The Charles Drew University was incorporated to remedy the chronic lack of medical care for the historically underserved area of South Los Angeles. Five years later, defendant County of Los Angeles (“the County”) opened the Martin Luther King Hospital immediately across the street from the University. The Hospital was later renamed Martin Luther King/Drew Medical Center (“King/Drew” or “the Hospital”) to acknowledge the County’s ongoing partnership with The Charles Drew University.

1 3. Indeed, since 1972, The Charles Drew University has partnered with the County
2 to help the County fulfill its legal mandate under California Welfare and Institutions Code
3 Section 17000 to provide quality medical and hospital care for “incompetent, poor, indigent
4 persons, and those incapacitated by age, disease, or accident” in the County. Among other
5 things, under a series of contracts and renewed contracts with the County, The Charles Drew
6 University has provided the Hospital with faculty doctors, medical students, interns, and
7 residents to serve the citizens in King/Drew’s service area. If the total area actually serviced by
8 the Hospital were an independent municipality, it would be the fifth largest city in the United
9 States after New York, Los Angeles, Chicago, and Philadelphia.

10 4. Under its long-term contractual relationships with the County, The Charles Drew
11 University has provided a range of essential general and specialized medical services to the
12 Hospital’s patients in exchange for monthly payments by the County. At the same time, the
13 County has been obligated to maintain King/Drew as a teaching facility for the University’s
14 students, healthcare professionals and technicians, and for the University’s medical and dental
15 residents through residency and fellowship programs in specialties ranging from
16 obstetrics/gynecology to psychiatry to ophthalmology.

17 5. For over 35 years, The Charles Drew University has become a beacon of hope
18 and a pillar of community strength through its many educational and social programs for local
19 residents. Its close affiliation with the Hospital – and its commitments to training future doctors
20 and other healthcare professionals – was viewed with pride by the community. Moreover, the
21 University’s unique and supporting environment of providing medical education, while serving
22 the most impoverished citizens of Los Angeles County, has been lauded in a peer review journal
23 as a paradigm for significantly increasing medical students’ commitment to practice medicine in
24 underserved areas. See M. Ko, et al., *Impact of the University of California, Los*
25 *Angeles/Charles R. The Charles Drew University Medical Education Program on Medical*
26 *Students’ Intentions to Practice in Underserved Areas*, Academic Medicine, Vol. 80, No. 9,
27 September 2005. The study concludes as follows: “[o]ur study points to the potential benefits of
28 programs similar to UCLA/Drew. If more medical schools were to develop these types of

1 service-oriented programs, educators could make a long-term contribution to alleviating
2 physician shortage in our most disadvantaged communities.”

3 6. While The Charles Drew University – under its partnership with the County –
4 was fulfilling its duty of producing medical students who would return to the community to
5 serve the underserved populations, the County for its part was required to maintain the Hospital
6 as “a high quality teaching environment” in accordance with all applicable standards of federal,
7 state, and accrediting agencies. Over the last five years, however, the County has betrayed its
8 poorest citizens and sabotaged its partnership with The Charles Drew University by continually
9 failing to operate the Hospital in compliance with the standards of federal, state and independent
10 accrediting agencies.

11 7. Among other requirements, in order to operate King/Drew (now known as MLK-
12 Harbor Hospital), the County must maintain the Hospital’s certification as a Medicare provider
13 by the U.S. Department of Health and Human Services Center for Medicare and Medicaid
14 Services (“CMS”). So long as the Hospital remains in good standing with CMS, the County
15 receives approximately \$200 million per year of Medicare funding. Starting several years ago,
16 CMS issued a series of negative evaluations citing the County for failure to operate the Hospital
17 in a safe condition and in compliance with federal standards. Similarly, the Joint Commission
18 on Accreditation of Healthcare Organizations (“JCAHO”), an independent, non-profit
19 organization that serves as the national accrediting body in health care, was increasingly critical
20 of the County’s operation of the Hospital. JCAHO expressed serious concerns about patient
21 safety and compliance with prevailing hospital standards, and warned that JCAHO accreditation
22 was in jeopardy. Because the County failed to heed JCAHO’s clear warnings and failed
23 undertake prompt, decisive action to correct these deficiencies, the Hospital lost its JCAHO
24 accreditation in 2005.

25 8. The County’s abysmal failure to maintain the Hospital’s JCAHO accreditation
26 seriously undermined The Charles Drew University’s own accreditation of its Graduate Medical
27 Education programs in general, and its residency and fellowship programs in particular.
28 Specifically, under the standards of the Accreditation Council for Graduate Medical Education

1 (“ACGME”) – a private, non-profit organization that evaluates and accredits medical residency
2 programs in the United States – a teaching hospital must have all necessary accreditations and
3 government approvals, and the Hospital’s loss of JCAHO accreditation violated that
4 requirement. Fortunately, The Charles Drew University reached an agreement with ACGME
5 and obtained a waiver of the Hospital’s failure to retain JCAHO accreditation. That waiver,
6 however, was based on the express condition that the Hospital maintain its CMS certification.
7 Moreover, the County at all times was fully aware that it was essential to the very existence of
8 The Charles Drew University’s graduate medical education and residency programs that the
9 Hospital not lose its CMS certification.

10 9. The next year, however, the County failed inspection once again, and the Hospital
11 lost its CMS certification. Specifically, on September 22, 2006, CMS informed the County in a
12 195 page report that it was terminating the Hospital’s Medicare provider certification, resulting
13 in the eventual loss of \$200 million of annual federal funding for the Hospital. Among other
14 things, CMS stated that its most recent inspection found “serious violations” at the Hospital in
15 such areas as Patient Rights, Quality Assessment Performance Improvement, Nursing,
16 Pharmacy, Physical Environment, Infection Control, Surgical Services, and Rehabilitation
17 Services. The survey also documented the County’s failure to remedy “previously-identified
18 systemic problems” and the Hospital governing body’s failure “to identify and take appropriate
19 measures to eliminate clear threats to patient health and safety.”

20 10. Moreover, as the County’s DHS director admitted in a letter to The Charles Drew
21 University’s President dated November 27, 2006, “[t]he deficiencies cited by CMS did not
22 directly relate to the operation of the training programs, the quality of physician oversight of the
23 residents, or the residents’ conduct in the hospital.” (emphasis added) Thus, by the County’s
24 own admission, The Charles Drew University fulfilled its longstanding contractual responsibility
25 to provide the Hospital with quality physician training services, and the County alone is
26 responsible for the Hospital’s loss of Medicare certification. Nevertheless, officials of the
27 County have sought, and continue to seek, to make The Charles Drew University the scapegoat
28 for the County’s betrayal of its obligations to the impoverished and medically underserved in our

community. It should be noted that all County doctors, whether or not they provided resident training, at all times reported to the Hospital's Medical Director for all their Hospital activities, and the Hospital was responsible for their performance.

11. The loss of federal Medicare funding precipitated a crisis that the County – under the pretext of stabilizing the Hospital – has engineered into a catastrophe for The Charles Drew University and the 1.67 million people who rely upon King/Drew for medical services. In the fall of 2006, rather than seeking more time from CMS to remedy the cited deficiencies, the County precipitously announced that it was effectively closing a Hospital with a licensed bed capacity of 537 beds by making it a small community hospital with only 42 beds. The County's radical and draconian downsizing of King/Drew has returned South Los Angeles to the universally-condemned situation preceding the Watts Rebellion – no convenient “comprehensively-equipped hospital in this area.” Indeed, the situation will be worse – for example, the County's wholesale destruction of The Charles Drew University's graduate medical education program will result in a lower physician to patient ratio in that traditionally underserved community than before the Watts Rebellion. Moreover, due to the County's unlawful cutbacks of medical services to the needy, the citizens who were served by King/Drew for 35 years will once again be forced to travel long distances to other overcrowded County hospitals such as LA County Harbor/UCLA in Torrance and LA County/USC in East Los Angeles. For those with debilitating diseases, heart conditions, and physical handicaps, and for the seriously injured and the poor, the County's heartless decision to deprive the community of an accessible and comprehensive medical center is not merely inconvenient – it is life threatening.

12. The County's failure to operate the Hospital in accordance with federal, state and independent accrediting agencies' standards breached the County's contract with – and inflicted massive collateral damage on – The Charles Drew University. As alleged above, the accreditation of the University's residency and graduate medical education programs depended upon the County ensuring that the Hospital maintains its CMS certification. With the loss of that certification, The Charles Drew University had no choice but to withdraw voluntarily its

1 accreditation, rather than face forcible de-accreditation by ACGME. By voluntarily
2 withdrawing, the University can seek reinstatement of its accreditation as early as July of 2008.
3 At that time, The Charles Drew University will attempt to rebuild its widely admired and much
4 lauded programs, one specialty at a time.

5 13. The County's acts and omissions have resulted in the total destruction of The
6 Charles Drew University's resident program and the termination of 248 residents. Further, The
7 Charles Drew University has lost and will continue to lose valued faculty and substantial funding
8 for pioneering research that has been a hallmark of its service to the community and medical
9 science.

10 14. The County's actions have dealt a severe blow to The Charles Drew University's
11 reputation, financial condition, ability to retain and recruit faculty and staff, and plans to have its
12 own four-year medical degree program. Thirty-five years of hard work and dedication by
13 thousands of faculty, staff, graduate medical students, the local residents, and others—as well as
14 the investment of hundreds of millions of dollars – have been put in jeopardy by the County's
15 breach of contract, failure to adhere to accreditation standards, and precipitous downsizing of
16 King/Drew. One of the foremost minority-based medical schools in the nation—which recently
17 received a commendation for excellence from ACGME – is struggling for survival.

18 15. The County's malfeasance in operating the Hospital – and lack of will to correct
19 the deficiencies – is a tragedy not only for The Charles Drew University, but also for a city that
20 has sought for decades to heal the wounds caused by chronic *de facto* and *de jure* racial
21 discrimination, unemployment, poor or unavailable housing, lack of government services, and
22 the absence of medical and hospital services in South Los Angeles. Trying to balance its budget
23 on the backs of the poor and vulnerable residents of South Los Angeles, the County has breached
24 its 40-year promise to provide quality, comprehensive medical care to these chronically
25 underserved residents. In addition to violating California Law requiring adequate medical care
26 for all, the County's *de facto* closure of King/Drew and destruction of The Charles Drew
27 University's residency program constitutes an egregious violation of our citizens' civil rights,
28 and is directly contrary to California law requiring adequate medical care for all.

16. This lawsuit seeks redress for the County's breach of contract and unlawful and immoral conduct in abandoning The Charles Drew University and 1.67 million residents of South Los Angeles.

THE PARTIES

17. Plaintiff The Charles Drew University is incorporated in the State of California as a private, non-profit, educational institution. Its principal place of business is within the County of Los Angeles.

18. Defendant County of Los Angeles (the “County”) is, and at all times mentioned herein was, a government entity duly organized and existing under the laws of the State of California. At all material times, the County, through the County’s Department of Health Services, has been the owner and operator of the King/Drew Medical Center, which is located adjacent to The Charles Drew University.

19. The Charles Drew University does not know the true names and capacities of those Defendants sued herein as DOES 1 through 100, inclusive, and therefore sue these Defendants by such fictitious names. The Charles Drew University will amend this Complaint to allege their true names and capacities when such are ascertained. The Charles Drew University is informed and believes, and on that basis alleges, that each of the Defendants sued herein as DOES 1 through 100, inclusive, is in some manner legally responsible for the wrongful acts set forth herein.

20. The Charles Drew University is informed and believes, and on that basis alleges, that Defendants, and each of them, are and were at all times herein mentioned, the agents, servants, employees, joint venturers, and/or conspirators of each of the other Defendants, and at all times herein mentioned were acting within the course and scope of said agency, employment, and service in furtherance of the joint venture and/or conspiracy.

JURISDICTION AND VENUE.

21. Jurisdiction and venue are proper in Los Angeles County because the County itself is a defendant in the action, and all alleged acts and omissions occurred in the County of Los Angeles

1 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

2
3 **I. THE CHARLES DREW UNIVERSITY HAS SERVED THE COUNTY'S**
4 **UNDERSERVED CITIZENS FOR DECADES**

5 22. Incorporated in 1966, The Charles Drew University is named in honor of Dr.
6 Charles R. Drew, a brilliant African-American physician whose pioneering work in blood
7 preservation has saved millions of lives in the last 60 years.

8 23. The Charles Drew University is comprised of a College of Medicine, a College of
9 Science and Health, and several programs designed to interest young persons in medicine and
10 science through the “pipeline continuum” from high school Head Start Programs through actual
11 medical residency training. As an example, since the year 2000, the University and the National
12 Institutes of Health National Institute of Diabetes and Digestive and Kidney Diseases have
13 teamed to provide high school students with innovative avenues to explore and expand their
14 interests in the biomedical sciences at The Charles Drew University’s affiliate King/Drew
15 Medical Magnet High School. The program is designed to increase the number of disadvantaged
16 students – including those who are Hispanic/Latino, African Americans, Native American, Asian
17 Pacific Islanders, and Alaskan Natives – involved in bio-medical research.

18 24. Located in the Watts-Willowbrook section of South Los Angeles, The Charles
19 Drew University’s diverse and complex patient population provides a unique academic
20 environment for its students, interns, residents and faculty. The area served by The Charles
21 Drew University and the Hospital is known as “Service Provider Area 6, or “SPA” 6.” While
22 Los Angeles County contains eight different SPAs, the inhabitants of SPA 6 greatly outnumber
23 any other SPA – exceeding 1.67 million residents in an urban, multicultural and
24 socioeconomically disadvantaged community. SPA 6 has an unemployment rate that is double
25 the Los Angeles County average, and in some locations, as many as 70% of the citizens are
26 receiving public assistance. In addition, the area has the highest rate of persons in the County
27 living below the poverty rate (32%), and in Watts itself, the poverty population is 43% compared
28

1 to 17% for Los Angeles County. The area also has a comparably higher percentage of single-
2 parent households.

3 25. The area's racial/ethnic makeup is 60% Hispanic, 23% African American, 12%
4 non-Hispanic white, and 5% Asian American. In addition, the adjacent communities of Gardena
5 (30% Asian American) and Wilshire Center (32% Asian American) provide access to Asian
6 American populations. Nearly 46% of the patient population in the area has less than a high
7 school education. The area's population has a median age of 25.6 years and a median family
8 income of only \$17,597, and 40% of its residents are below 19 years of age.

9 26. The region suffers from the highest morbidity and mortality rates in Los Angeles
10 County in areas recognized by the National Institute of Health as priority national health
11 concerns. The area has the highest death rates in the County for coronary heart disease, cancer,
12 stroke, diabetes, homicides (ages 15-34), infant deaths, and drug-related deaths. In LA County,
13 the area has the highest teen birth rate, the highest rate of live births with no or late prenatal care,
14 the highest high school drop out rate, and the highest rate of uninsured adults and children.

15 27. The Health Resources and Services Administration of the United States
16 Department of Health and Human Services has designated SPA 6 as a medically underserved
17 area (MUA) and a health professional shortage area (HPSA). Even before the County's drastic
18 downsizing of King/Drew, the area had the lowest rate of physicians and hospital beds per
19 capita. Before the County's cuts, the physician-to-patient ratio in the area was an alarmingly low
20 1:650 ratio – which was already significantly lower than the 1:200 ratio for the State of
21 California as a whole. In addition to having the greatest health disparities in the County, 47.4%
22 of the adults and almost 30% of the children in SPA 6 are uninsured, and many residents are
23 underinsured.

24 28. In short, the area served by The Charles Drew University constitutes the most
25 medically needy, indigent, underserved, and neglected healthcare area in the County. Thus, if it
26 were not for the work and assistance of The Charles Drew University faculty and
27 resident/student trainees operating at the Hospital, the over 1.6 million residents of SPA 6 – and
28

1 the hundreds of thousands of uninsured and underinsured people in particular – would have been
2 deprived of access to physicians and other essential health services.

3 29. In serving the underserved, The Charles Drew University faculty and residents
4 have received accolades for their excellence. For example, eight faculty members have received
5 the UCLA-David Geffen School of Medicine Award for Excellence in medical education in the
6 last nine years – a peer recognition award for medical student education and designated for
7 faculty members who have served with sustained excellence, skill, innovation, and enthusiasm
8 over the years. Two faculty members received the award in 1998: Karlton H. Johnson, MD and
9 Lewis A. Hamilton, MD; in 1999 Theodore R. Brook, MD won the award; in 2000, Theodore Q.
10 Miller, MD won the award; in 2001 Shobita Rajagopalan, MD received the honor; in 2002
11 Daphne Calmes, MD won the award; in 2004 Lorraine Williams-Smith, MD won the award; and
12 in 2006 Ronald A. Edelstein, Ed. D. received the award. In addition, The Charles Drew
13 University’s Paul A.. Kelly, David Masters and Keith Norris received “The Best Doctors Award
14 for 2005-2006.” Former Dean Dr. David Satcher went on to become the 16th Surgeon General
15 of the United States.

16 30. The Charles Drew University is widely-regarded as an innovative medical
17 education university pioneering in teaching doctors and healthcare professionals to deal with the
18 special needs of the poor, chronically ill populations in the nearly forgotten inner city.

19 **II. THE HISTORY OF THE CHARLES DREW UNIVERSITY**

20 31. Soon after its incorporation in 1966, The Charles Drew University emerged as the
21 shining standard of community strength and social justice by providing both education and
22 urgently-needed medical care to an egregiously neglected community. Within its unique
23 academic environment, the University has offered quality medical and science education to those
24 who seek to give back to the community and truly fulfill the moral imperative of the medical
25 profession. The Charles Drew University has trained many thousands of physicians and allied
26 health professionals to provide healthcare with excellence and compassion, especially to indigent
27 and neglected populations. The acute healthcare needs of the South Los Angeles community
28

1 particularly require many different medical specialists, which the University's residency
2 programs have provided.

3 32. Not surprisingly, an overwhelming majority of The Charles Drew University's
4 graduates go on to offer their expertise and compassion to various medically underserved and
5 health professional shortage areas within and outside of Los Angeles, the State of California, the
6 country and internationally. By 2005, according to the California Wellness Foundation, more
7 than one-third of all underrepresented minority doctors practicing in Los Angeles County
8 received training at The Charles Drew University – a remarkable statistic illustrating the
9 University's widespread, positive impact.

10 33. In addition, The Charles Drew University has conducted innovative biomedical
11 research while advocating progressive health policies in its community by focusing on the
12 elimination of healthcare disparities and by providing access to healthcare services for
13 underserved populations.

14 34. Recognizing The Charles Drew University's profound and noble history, the
15 United States Congress designated the University as a "historically black graduate institution" in
16 1987. The Charles Drew University is also designated as a Hispanic-serving health professions
17 institution, making it the only minority-focused health sciences institution on the West Coast,
18 and one of only four minority medical schools in the United States.

19 35. Between 2000 and 2005 alone, over 1,200 individuals have received health
20 profession degrees and certificates from The Charles Drew University. As of 2005, The Charles
21 Drew University's Graduate Medical Education and Residency Programs had attained
22 accreditation status in the specialties: Anesthesiology, Emergency Medicine, Family Medicine,
23 Internal Medicine, Dermatology, Endocrinology, Gastroenterology, Infectious Disease, Geriatric
24 Medicine, Obstetrics & Gynecology, Ophthalmology, Oral & Maxillo-Facial Surgery, General
25 Dentistry, Otolaryngology, Pediatrics, Perinatal, and Psychiatry. Similarly, the College of
26 Science and Health Programs are accredited by the external accrediting agencies: Health
27 Information Technology, Medical Assistant, Nuclear Medicine, Radiography, Pharmacy
28 Technology, Physician Assistant, Substance Abuse Counseling/Community Health (Alcohol and

Other Drug Studies), Phlebotomy Training Tech I, and Nurse Assistant Program. As shown below, the history of the founding, growth and achievements of The Charles Drew University explains its uniqueness as an educational institution and the vital services it performs to the most underserved area of Los Angeles County.

III. THE COURSE OF DEALINGS BETWEEN THE CHARLES DREW UNIVERSITY AND THE COUNTY

A. THE McCONE COMMISSION AND THE LEGACY OF THE WATTS REBELLION

36. Although community leaders had been decrying the urgent need for medical facilities in the area of SPA 6 since the mid-1950s, it took the violent and tragic Watts Rebellion in August of 1965 for government officials to pay attention to these problems. Specifically, shortly after the Rebellion, Governor Edmund G. “Pat” Brown appointed a special commission chaired by John A. McCone (the “McCone Commission”) to study the disturbances – known by them as the “Watts Riots” – and make a comprehensive report and recommendation. Among other things, the Commission was instructed to “probe deeply the immediate and underlying causes of the riots,” and consider “[t]he physical and sociological condition in the area of the riots at the time they commenced,” and “[t]he public and private welfare programs available and not available in the area and the extent to which they were utilized.” Governor Brown further ordered that “the Commission should develop recommendations for action designed to prevent a recurrence of these tragic disorders,” and “consider what additional can be done at any level of government or by any agency of the government to prevent a recurrence.”

37. The McCone Commission completed its report in December of 1965. In addressing the physical and sociological condition in the area of the Rebellion, the report stated as follows:

Statistics indicate that health conditions of the residents of south central Los Angeles are relatively poor and facilities to provide medical care are insufficient. Infant mortality, for example, is about one and one-half times greater than the city-wide

1 average. Life expectancies are considerably shorter. A far lower
2 percentage of the children are immunized against diphtheria,
3 whooping cough, tetanus, smallpox, and poliomyelitis than in the
4 rest of the county.

5 As established by the comprehensive reports of consultants
6 to the Commission, the number of doctors in the southeastern part
7 of Los Angeles is grossly inadequate as compared with other parts
8 of the city. It is reported that there are 106 physicians for some
9 252,000 people, whereas the county ratio is three times higher.
10 The hospitals readily accessible to the citizens in southeastern Los
11 Angeles are also grossly inadequate in quality and in numbers of
12 beds. Of the eight proprietary hospitals, which have a total
13 capacity of 454 beds, only two meet minimum standards of
14 professional quality. The two large public hospitals, County
15 General and Harbor General, are both distant and difficult to reach.
16 The Commission recognizes that the motivation of patients to take
17 advantage of the available medical facilities is an important factor
18 in health conditions but it appears that the facilities in the area are
19 not even sufficient to care for those who now seek medical
20 attention.

21 In light of the information presented to it, the Commission
22 believes that immediate and favorable consideration should be
23 given to a new, comprehensively-equipped hospital in this area,
24 which is now under study by various public agencies. To that end
25 we strongly urge that a broadly based committee (including
26 citizens of the area and representatives of the Los Angeles County
27 Department of Charities, Los Angeles County Medical
28 Association, the California Medical Association, the State

1 Department of Health, and medical and public health schools) be
2 appointed to study where such a hospital should be located and to
3 make recommendations upon various technical and administrative
4 matters in connection with the hospital.

5 (Emphasis added)

6 38. Thus, in 1966, The Charles Drew University arose literally out of the ashes of the
7 Watts Rebellion in response to the McCone Commission's call for a broad-based effort to
8 provide medical care to the traditionally neglected and underserved area of South Los Angeles.

9 **B. THE CHARLES DREW UNIVERSITY'S AND THE COUNTY'S**
10 **PARTNERSHIP TO SERVE SOUTH LOS ANGELES**

11 39. In 1972, six years after the McCone Commission Report, the County of Los
12 Angeles established the Martin Luther King Hospital adjacent to The Charles Drew University.

13 40. Since the opening of the Hospital (which eventually became the Martin Luther
14 King/Drew Medical Center), The Charles Drew University and the Hospital have been engaged
15 in a close relationship very much resembling a joint venture to fulfill the McCone Commission's
16 promise that never again will the South Los Angeles community be subject to the inequitable
17 distribution of healthcare services that fueled the resentment and violence of 1965. Specifically,
18 since 1972, The Charles Drew University and the County have had an ongoing contractual
19 relationship that both parties have described as a "partnership."

20 41. Pursuant to this relationship, in a continuous course of dealing spanning 35 years,
21 The Charles Drew University's faculty, students, interns and residents have provided the
22 necessary services for the Hospital to function in the community. To this end, the parties entered
23 into a seamless series of successive contracts under which, among other things, the County
24 agreed to maintain the Hospital as a teaching facility with all appropriate accreditations, and The
25 Charles Drew University agreed to utilize its Graduate Medical Education and Residency
26 programs to supply the Hospital with supervising faculty, interns, and residents who would
27 render critical services to the King/Drew's patients at a relatively low cost, thereby saving the
28 County substantial public funds. These agreements and renewed agreements are commonly

1 known as the Medical School Operating Agreement or “MSOA”. Over the past decades, without
2 the MSOA and The Charles Drew University’s contributions, the Hospital could not have
3 survived as a viable healthcare facility.

4 42. In addition, in the course and scope of the dealings between the County and The
5 Charles Drew University over the past 35 years, it was understood and agreed between the
6 parties that both The Charles Drew University and the County would work diligently and in
7 good faith to maintain The Charles Drew University’s affiliation with King/Drew in order to
8 advance the parties’ goals and the County’s legal obligation to provide quality healthcare to a 94
9 square mile group of communities in South Los Angeles, and particularly to the community’s
10 underserved populations. As part of the parties’ agreement, the County agreed to pay 100% of
11 these residents’ salaries, educational costs and benefits, and 100% of the University’s Graduate
12 Medical Education staff salary and benefits, and the University’s staff support expense.

13 43. Moreover, the County made a binding commitment to continue to provide this
14 funding in order to fulfill its promise and mission as mandated by the 1965 McCone
15 Commission Report. Indeed, in March 30, 2005, a report was issued by the Steering Committee
16 on the Future of King/Drew Medical Center – a joint task force sponsored by The California
17 Endowment consisting of, among others, the County’s Department of Health Services (“DHS”)
18 represented by the then DHS Director Thomas L. Garthwaite, MD, and the DHS Chief Operating
19 Officer Mr. Fred Leaf. The report (the “Report”) is entitled “*Fulfilling the Promise: A Roadmap*
20 *for Meeting the Health Care Needs of the South Los Angeles Community.*” (March 30, 2005
21 Steering Committee Report and Recommendations; emphasis in original)

22 44. The Introduction to the Report states that The Charles Drew University and the
23 County have been in a relationship for over 30 years that is akin to a partnership. The Report
24 further states that The Charles Drew University and the County “have been linked by their
25 shared mission, history and contractual relationships,” and that “both are vital components of
26 Los Angeles County’s health safety net and *both must survive and thrive* in order to provide
27 necessary urgent and long-term healthcare for the residents of South Los Angeles.” The Report
28 further notes that “[o]ver the past 30 years of *partnership*, King/Drew and The Charles Drew

1 University have experienced great success in such areas as ophthalmology and endocrinology,
2 neonatal intensive care, and trauma care.” (*Id.*, at p. 1; emphasis added) The Report also states
3 that the “*unique relationship* between [the Hospital] and The Charles Drew University has
4 distinguished the King/Drew Medical Center Complex as an academic medical institution with
5 the capacity to recruit socially committed, academically qualified faculty members who, in turn,
6 actively recruit socially committed and academically qualified medical students and resident
7 physicians.” (*Id.* at p. 5; emphasis added)

8 45. The Steering Committee further “strongly recommend[ed] that the *partnership*
9 *between King/Drew Medical Center and The Charles Drew University should remain intact* with
10 a new management structure to oversee the partnership. (*Id.* at p. 6; emphasis added) In
11 addition, on page 8 the Report states that “[i]n fact, The Charles Drew University and [the
12 Hospital] share a common mission to provide quality medical care and medical education with
13 excellence and compassion to the underserved populations.” Hence, The Charles Drew
14 University and the County were “fulfilling the promise” to South Los Angeles that a full service
15 hospital would remain conveniently close to its most needy citizens.

16 46. Moreover, in an earlier report from DHS’s own “Taskforce on Graduate Medical
17 Education,” which was submitted to the County Board of Supervisors on December 23, 2003,
18 DHS itself stated that The Charles Drew University has a *partnership* with the County, and that
19 The Charles Drew University’s mission “is enhanced through its *partnership* with LA County
20 Department of Health Services, whose mission is to provide the medically indigent with
21 appropriate access to health services at the community level. This *partnership between Drew*
22 *and DHS* comes together in the King/Drew Medical Center (KDMC) where healthcare is
23 provided and where clinical teaching occurs.” (December 23, 2003 DHS Taskforce on Graduate
24 Medical Education at King/Drew Medical Center, p. 1; emphasis added)

25 47. In the Addenda, the Taskforce’s 2003 report expressly responds to “Specific
26 Board of Supervisors’ Questions,” regarding “the County’s responsibility and obligation as a
27 teaching hospital and the implications for patient care delivery” as follows:
28

1 The County has two major responsibilities or obligations as a
2 teaching hospital: (1) “To maintain an environment of excellence
3 in patient care with all the necessary support systems;” and (2) “To
4 develop and maintain, *through partnership or otherwise*, an
5 optimal environment for teaching, learning and other scholarly
6 activities in order to prepare physicians and others for the future.”
7 While this is done through partnership, the relationship must be
8 one in which the two entities [The Charles Drew University and
9 the Hospital] are *wedded* in their commitment to excellence in
10 patient care and teaching – speaking with one voice about the need
11 for accountability of all involved.

12 (*Id.*, p. 6; emphasis added)

13 48. The true nature of this partnership was evident when The Charles Drew
14 University faced obstacles to the accreditation of its residency program in 2001 and 2003. The
15 County and DHS insisted – in part through the Report of the joint task force – that the University
16 take major steps to rectify the situation. The Charles Drew University rose spectacularly to the
17 challenge, so greatly improving its GME program that it received a commendation from the
18 accrediting body (ACGME). In April of 2006, ACGME awarded The Charles Drew University
19 an “Exemplary Compliance” commendation for the “Essential Area” of Educational Planning
20 and Evaluation. The commendation stated “The IRC [ACGME’s Institutional Review
21 Committee] recognizes the extraordinary efforts put forth by the institution to achieve this
22 noticeable improvement in compliance with the Institutional Requirements.” In addition, “[t]he
23 IRC commends the institution on its best practices; in particular, the IRC identified the
24 Institutional and Program Tracking Matrix as an especially helpful tool used by the DIO [the
25 Designated Institutional Official] and GMEC [Graduate Medical Education Committee] to
26 maintain effective institutional oversight.” Thus, overcoming severe adversity, the University
27 became the shining star of the County/The Charles Drew University partnership.

1 49. On October 18, 2005, at a Board of Supervisor's meeting, County Supervisor Zev
2 Yaroslavsky put into the public record his praise for the manner in which the Charles Drew
3 University triumphed through the crisis:

4 I want to commend the continued efforts at the University. I think
5 if there's one area in this whole thing that has-- where some
6 difficult decisions have been made by your board, by, first of all,
7 to change the board, the chairman of your board has taken
8 considerable grief for making some difficult decisions at the board
9 level. . . . I get reports from it, not just from . . . the academic level
10 but also from board members who come from all four corners of
11 the county now and . . . in the medical field and it's a different
12 place. I think you have made progress, and progress will be
13 defined very simply as to whether you can regain the sanction, the
14 accreditation of the ACGME and I don't know what the answer to
15 that is but I have more confidence that you're moving in the right
16 direction than that we're [i.e., the County is] moving in the right
17 direction. I was just saying to Mr. Janssen a little while ago, that,
18 privately, I'll say it publicly, that it would be a real irony if, while
19 Drew University began to turn itself around, I don't know how
20 much you can turn yourself around if we don't turn the hospital
21 around because *they're joined at the hip* but I understand you're
22 talking about – there's some discussions about rotating residents in
23 other hospitals around town, I know at least one of them I'm aware
24 of, and that's very promising, that's very exciting because they do
25 believe – and a lot of the hospitals and a lot of the deans and – that
26 I've spoken to over the last couple of years have said that – I was
27 going to say the kids – the young people who come in, your interns
28 and residents – your students and residents who come into Drew

1 are – are good, smart students. But I don't want to use a sports
2 metaphor but if the coach – you know, a coach can coach a team,
3 the same group of people, to winning games or to losing games
4 and it's our coaching staff, historically, at all levels, that needs to
5 be addressed. And I think, at least in the Drew University case,
6 you're doing it. I just want to encourage that continued effort.
7 You've taken a lot of heat from some community folks who prefer
8 the status quo. I know that. We all know that. We've seen it here.
9 But you've persevered. You haven't relented. You haven't caved
10 under the pressure and there's been a lot of pressure. If you keep
11 that up, I think this may become – I'd like to think it would become
12 a success story in this whole saga, it would be a great-- it would be
13 a great thing because Drew University, for all the reasons we all
14 know and have discussed previously in this room, Drew
15 University, if it's done right, is a huge asset to – not only to our
16 community and our county and to that part of our county and to the
17 county as a whole, but to communities all over the country who
18 don't have the quantity of quality care that they-- that they deserve
19

20 (Emphasis added)

21 **C. THE COUNTY'S CALLOUS BETRAYAL OF THE CHARLES DREW**
22 **UNIVERSITY AND THE COUNTY'S LEGAL OBLIGATIONS TO THE**
23 **CITIZENS OF SOUTH LOS ANGELES**

24 50. In stark contrast to The Charles Drew University's heroic efforts to receive an
25 ACGME commendation, when the County's own failures of oversight and management recently
26 caused the federal government to terminate King/Drew's Medicare provider agreement, the
27 County's response was to "cut and run" and abandon its partnership with The Charles Drew
28 University rather than even attempt to address the correctible issues raised by CMS.

1 Specifically, the County cavalierly decided not to appeal or seek a stay of the CMS's decision,
2 and instead *breached* the MSOA, ceased operating the Hospital as a teaching facility as of
3 December 1, 2006, and reduced the services of the Hospital, which has a licensed bed capacity
4 of 537 beds, to the level of a small under-funded and overworked community hospital of only 42
5 beds (12 of which are devoted to the Hospital's intensive care unit). The County therefore
6 abandoned both The Charles Drew University and the 1.67 million residents served by
7 King/Drew. It is now painfully evident that, although The Charles Drew University has more
8 than fulfilled its promise to the community to work to reduce the unconscionable healthcare
9 disparities in South Los Angeles that led to the Watts Rebellion, the County and its DHS
10 Director have deliberately violated the law and turned back the clock of progress 42 years.

11 51. The County has heartlessly betrayed the values and tenets of the McCone
12 Commission and the County's partnership with The Charles Drew University by unilaterally and
13 suddenly terminating King/Drew as a teaching facility (and concurrently changing the name of
14 the Hospital to omit any mention of The Charles Drew University), thereby cutting off 248 of
15 The Charles Drew University residents and interns who had been performing vital services for
16 the Hospital. The County Board of Supervisors has further made the Hospital into a sham or
17 "potemkin village" by radically reducing the Hospital's inpatient capacity so that it will amount
18 to a substandard community hospital totally inadequate to serve the area's residents, yet
19 cynically proclaiming that the Hospital was still "open."

20 52. Despite the County's false and misleading rhetoric, the citizens of SPA 6 – whom
21 the federal government itself has determined are medically underserved – no longer have a
22 public comprehensive care hospital for their urgent medical needs. Instead, the County has
23 imposed a so-called "MetroCare Plan" which the Board of Supervisors approved despite the
24 compelling testimony of residents, healthcare advocates, doctors, lawyers, and labor leaders
25 regarding the devastating impact that such a plan would have on the citizens of South Los
26 Angeles. Under the MetroCare Plan (which has been aptly labeled as the "*We Don't Care*
27 *Plan*"), the SPA 6 residents requiring medical care – which include the County's highest
28 percentage of multiple amputees due to severely high incidents diabetes – must take shuttles or

1 public transportation to Harbor/UCLA Hospital in Torrance, County/USC Hospital in East Los
2 Angeles, or facilities as far away as Sylmar. Not only will this MetroCare Plan deprive South
3 Los Angeles of vital, life saving healthcare services, it will also reduce services to other needy
4 Los Angeles County residents in the surrounding areas of the already overwhelmed hospitals and
5 medical facilities that must absorb the overflow from King/Drew.

6 53. The County took this drastic action and imposed the inhumane MetroCare Plan
7 for one purpose only – apparently to save money by eliminating healthcare services to its most
8 needy citizens. Not only has the County’s betrayals and breaches of contract dealt a crippling
9 blow to The Charles Drew University, the County has also effectively eliminated the Hospital as
10 a viable health facility for 1.67 million largely poor and indigent residents. The County’s
11 audacious disregard for its contractual obligations and clear legal duties – not to mention solemn
12 historic promises – constitutes an immoral and shameful act. The County’s draconian measures
13 discriminate against the poor, indigent, minorities, seriously ill and injured, and physically and
14 mentally challenged – those of our fellow human beings who are least capable of protecting
15 themselves.

16 54. Tragically, this is not the first time that the County has tried to reduce its overall
17 budget deficit by curtailing vital health services to its most needy citizens. The County has a
18 history of severely reducing or eliminating legally-required medical services for the poor and
19 indigent.

20 55. For example, in the fall of 2002, the County Board of Supervisors imposed severe
21 reductions in services and personnel at the Hospital, which caused a healthcare crisis for the SPA
22 6 patient population. At the same time, the County closed eleven health centers and cut vital
23 services provided by free and low cost clinics, among other reductions. This action left
24 thousands of patients without timely access to medical care and caused life-threatening backlogs
25 in treatment.

26 56. In June 2003, the County further eliminated over 400 positions at the Hospital,
27 including dozens of physicians.

28

1 57. After opening the Hospital's renowned Trauma Center with its state of the art
2 diagnostic equipment, 24 Intensive Care Unit beds, two operating rooms and E.R Receiving Unit
3 in 1997, the County Board of Supervisors announced in November of 2004 that it would close
4 the facility, which treated 2,150 patients with critical wounds in the last year. The County's
5 closure of the trauma center resulted in trauma patients being treated in the Hospital's
6 Emergency Room, which was not equipped to deal with those patients. Moreover, the County
7 Board of Supervisors asserted that closing the center – which had provided a critical, life-saving
8 function in the community – was “crucial to turning the rest of the hospital around.” (*Los*
9 *Angeles Times*, November 23, 2004). Two years later, the Board's closed 93% of King/Drew.
10 Now it is clear that when the Board of Supervisors wanted to “turn around” King/Drew” in 2004,
11 it intended to revive the medical services scandal preceding the Watts Rebellion over 40 years
12 ago.

13 58. At the time of the County's acts, various community leaders and residents of SPA
14 6 – who actually lost family members due to these cuts – brought suit against the County in the
15 United States District Court for the Central District of California. The federal court enjoined the
16 County from taking some of these actions, and the injunction was unanimously upheld by the
17 Ninth Circuit Court of Appeals in *Harris v. County Board of Supervisors*, 366 F.3d 754 (9th Cir.
18 2003). However, the Trauma Center remained closed, even though the facility had been credited
19 with saving the lives of countless victims of gunshots, stabbings and serious traffic accidents in
20 an area with more trauma injuries than any comparable area in the County. Such is the legacy of
21 the County Board of Supervisor's commitment to public health.

22 59. Like its prior attempts to shut down the Hospital and balance its budget at the
23 expense of its most needy and powerless citizens, the County's present actions violate the
24 requirements of Welfare & Institutions Code Sections 10000, 17000 and 17001. Welfare &
25 Institutions Code Section 17000 requires that “[e]very county . . . shall relieve and support all
26 incompetent, poor, indigent persons, and those incapacitated by age, disease, or accident,
27 lawfully resident therein, when such persons are not supported and relieved by their relatives or
28 friends, by their own means, or by state hospitals or other state or private institutions.” Courts

1 construing §17000 have uniformly ruled that it imposes a *mandatory* duty upon all counties to
2 provide medically necessary care, not just emergency care, to poor persons who have no other
3 access to healthcare.

4 60. Welfare & Institutions Code Section 10000 also requires that those healthcare
5 services “shall be provided promptly and humanely” and in a manner that encourages “self-
6 respect, self-reliance and self-support.” Welfare & Institutions Code Section 17001 imposes a
7 further duty upon all California counties to “adopt standards of aid and care for the indigent and
8 dependent poor of the county” that comply with Sections 10000 and 17000.

9 61. The County is incapable of complying with these explicit statutory duties without
10 restoring services, beds, physicians and residents at King/Drew sufficient to provide high quality
11 life-saving health services to the community, remedy the deficiencies cited by CMS and others,
12 and enable The Charles Drew University to resume its residency programs.

13 **D. THE COUNTY’S BREACHES OF ITS CONTRACTUAL DUTIES TO**
14 **THE CHARLES DREW UNIVERSITY**

15 62. The Charles Drew University and the County entered into the most recent
16 iteration of the MSOA on October 1, 2004, which reaffirmed the parties’ mutual contractual
17 obligations. This MSOA would have expired by its terms on June 30, 2006, but the term of the
18 agreement was extended until June 30, 2007 by a written amendment to the MSOA (the “2006
19 MSOA”), which the County adopted on June 20, 2006 by a unanimous vote of the Board of
20 Supervisors. A true and correct copy of the MSOA, addenda and cover letter is attached hereto
21 as Exhibit 1 and incorporated herein.

22 63. Pursuant to the MSOA, the County owes The Charles Drew University the
23 following contractual duties and obligations:

24 -- Under § 3.1.1, the County is responsible for the governance, administration and
25 operation of the Hospital.

26 -- Under § 3.3.1, the County is responsible for providing qualified personnel in
27 adequate numbers, and sufficient supplies, equipment, support and facilities in order to
28 maintain “a high quality teaching environment in compliance with accreditation

standards JCAHO [Joint Commission on Accreditation of Healthcare Organizations which oversees the operations of the Hospital], ACGME [Accreditation Council for Graduate Medical Education which oversees The Charles Drew University’s residency program], and other accrediting and regulatory bodies and in conformity with all applicable state and federal laws, rules, regulations and standards.”

-- Under § 3.3.4, the County “*shall* maintain adequate staff and facilities to meet the educational and supervisory objectives of the University Training Programs in a manner consistent with the standards established by LCME [Liaison Committee on Medical Education, co-sponsored by the Association of American Medical Colleges and the American Medical Association] and ACGME.”

-- Under § 3.6.1, the County *shall* cooperate with The Charles Drew University’s activities in maintaining accreditation of any University Training Program implemented at the hospital, and further *shall* notify The Charles Drew University of any matters that may compromise such accreditation.

-- Under § 4.4, the County *shall* use its best efforts to avoid cost reduction activities that harm The Charles Drew University’s training programs.

(Emphasis added)

64. In a letter written in support of the June 20, 2006 Amendment No. 1 to the MSOA, the County represented that it would negotiate a new MSOA with The Charles Drew University during the Fiscal Year 2006-07 *immediately* upon the approval of Amendment No. 1. Specifically, in his May 25, 2006 letter to the County’s Board of Supervisors submitting the 2006 MSOA for approval by the Board, DHS Director stated on page 2 that “DHS and The Charles Drew University intend to negotiate a new agreement during Fiscal Year 2006-07. *It is anticipated that negotiations for a new agreement will commence immediately following the approval by your Board of Amendment No. 1.*” (Emphasis added) The letter further stated on page 6 that “given the nature and scope of the services provided by The Charles Drew University under the Agreement, as well as *the historic relationship between the County and The Charles*

1 *Drew University*, the Department determined it was not feasible to competitively bid this
2 contract.” (Emphasis added)

3 65. Despite several requests from the University, the County *never* commenced these
4 negotiations. Instead, the County—acting in bad faith and dealing unfairly with its partner—
5 committed multiple breaches of the MSOA by (1) failing to maintain appropriate JCAHO
6 standards for the accreditation of the Hospital; (2) losing the Hospital’s federal Medicare
7 approval and, not appealing the decision, and not taking corrective actions; (3) precipitously
8 reducing King/Drew services and making a mockery of the historic values represented by the
9 Hospital; and (4) intentionally terminating King/Drew as a teaching facility.

10 66. In particular, on September 22, 2006, the San Francisco office of the U.S.
11 Department of Health & Human Services Centers for Medicare & Medicaid Services (“CMS”)
12 hand delivered a letter to the County giving notice that in light of numerous unfavorable findings
13 in a recent investigation, CMS was terminating the Medicare provider agreement of King/Drew,
14 effective November 30, 2006 (later extended to March 31, 2007). CMS stated that it had
15 conducted a survey which documented “serious violations” at the Hospital in several areas,
16 including issues relating to the Hospital’s Governing body, Patients’ Rights, Quality Assessment
17 Performance Improvement, Nursing, Pharmacy, Physical Environment, Infection Control,
18 Surgical Services and Rehabilitation Services. CMS further noted that its survey “identified
19 numerous violations of federal requirements for quality of care in a hospital environment. The
20 findings indicate that many previously-identified systemic problems persist. The survey also
21 documented the inability of the hospital’s governing body to identify and take appropriate
22 measures to eliminate clear threats to patient health and safety.”

23 67. In stark contrast, The Charles Drew University’s programs at the Hospital were
24 not faulted by CMS, and *none* of the material grounds for CMS’s decision included any matter,
25 procedure or protocol that was the responsibility of The Charles Drew University. In short, the
26 County’s own failures to maintain adequate standards at the Hospital breached Sections 3.3.1,
27 3.6.1, 3.3.4 and 4.4 of the MSOA. The County’s failures further resulted in a loss of JCAHO
28 accreditation for the Hospital.

1 68. Upon receipt of the CMS report, the County was obligated under California law
2 and its contract with The Charles Drew University to undertake immediate, decisive measures to
3 correct each of the cited deficiencies and to restore the Hospital's Medicare provider certification
4 and JCAHO accreditation. With a good faith effort the County could have corrected the cited
5 deficiencies. Instead of promptly taking this responsible and legally-mandated approach, the
6 County actually exploited its own colossal failure to maintain the Hospital as a teaching
7 institution. Specifically, the County used the unfavorable CMS ruling – a self-inflicted wound –
8 as a pretext to breach its contractual obligations and the covenant of good faith and fair dealing
9 by deliberately terminating King/Drew's teaching affiliation. This action resulted in The Charles
10 Drew University immediately losing its residency programs and throwing its 248 residents into
11 education "limbo." Moreover, the County quickly announced a new "MetroCare Plan" that
12 closed the Hospital as a comprehensive medical center and reduced the emergency room
13 facilities to an unrealistic and dangerous level. As noted above, the "MetroCare Plan" violates
14 numerous provisions of California law.

15 69. Shortly after the County's deliberate breach of its contractual obligations to
16 provide a teaching hospital, on October 26, 2006, The Charles Drew University's accrediting
17 body ACGME declared that the loss of King/Drew Medical Center as The Charles Drew
18 University's teaching hospital partner constituted a "catastrophic event." Even though, as the
19 County itself admits, The Charles Drew University's residency and medical education programs
20 were *blameless* for the County's failure to maintain the Hospital's Medicare certification,
21 ACGME rules indicated that, because of the loss of CMS certification, the Hospital was
22 considered unsafe and The Charles Drew University's resident training would have to relocate
23 elsewhere at an accredited hospital.

24 70. The County deliberately caused this disaster by, among other things, breaching
25 section 3.6.1 of the MSOA by (a) refusing to consider maintaining the Hospital as a teaching
26 facility and deciding against pursuing a CMS appeal; and (b) deliberately refusing to notify The
27 Charles Drew University of this grave matter that could compromise the University's ACGME
28 accreditation. As a direct result, The Charles Drew University ultimately was forced to mitigate

1 its damages and voluntarily withdraw its ACGME accreditation for its residency program. The
2 Charles Drew University had no choice but to take this action in order to be able to re-apply at
3 the soonest possible date of July 2008, and then begin to rebuild its residency programs in 2008
4 —*one specialty at a time*.

5 71. The Charles Drew University took this drastic action in the interests of the 248
6 resident physicians whose learning environment has been rendered unstable by the loss of
7 accreditation at the Hospital. Moreover, if The Charles Drew University had not voluntarily
8 taken this action, the damages caused The Charles Drew University by the County's wrongful
9 acts would have increased enormously since the University would otherwise have to wait at least
10 several years to re-acquire a residency program.

11 72. The County had full knowledge that its breaches of the MSOA without notice or
12 even an effort to cooperate with The Charles Drew University would have far reaching and
13 disastrous effects upon the University, its residents and faculty, and the needy client population
14 that they serve. Indeed, the County itself is a sponsor of residency programs at County/USC and
15 Harbor/UCLA hospitals, and therefore at all times understood fully (a) what ACGME would
16 require of such a sponsor in the event a hospital used for the program ceased to be a teaching
17 facility; and (b) how the County's actions would cause long term damage to The Charles Drew
18 University. The County's callous indifference to these foreseeable, drastic consequences is
19 outrageous.

20 **E. GENERAL AND SPECIAL DAMAGES**

21 73. The County has at all times been fully aware that The Charles Drew University
22 would suffer catastrophic damages from the County's breach of the MSOA because County
23 employees have been working with The Charles Drew University for decades and were fully
24 aware of the devastating effects that would result if the County breached and terminated the
25 MSOA.

26 74. As a proximate and reasonably foreseeable result of the County's breaches of
27 contract, The Charles Drew University has suffered damages in lost revenues of \$66 million.
28

1 75. As a further proximate and reasonably foreseeable result of the County's breaches
2 of contract, which include the County's withdrawal of virtually all contacts between County
3 personnel and The Charles Drew University, The University has lost the services, and has been
4 forced to cover the net cost, of several valuable research physicians, which over the next five
5 years will result in increased costs and loss of support to The Charles Drew University in an
6 amount to be proven at trial, but in no event less than \$4 million.

7 76. The Charles Drew University has lost the services, and will be forced to cover the
8 salaries and overhead, of certain faculty which over the next five years will result in costs to The
9 Charles Drew University in an amount to be proven at trial, but in no event less than \$10 million.

10 77. In addition, the County's breaches of the MSOA have proximately caused and
11 will to continue to cause The Charles Drew University to suffer lost revenues, including critical
12 research grants and salaries, causing a projected loss of revenue in an amount to be proven at
13 trial, but in no event less than \$19 million over the next five to seven years. Furthermore, while
14 the County has allowed The Charles Drew University staff to remain in Hospital-designated
15 space – as required by the McCone Commission – *e.g.*, the Interns and Residents Dormitory, the
16 Augustus F. Hawkins Mental Health Center, the Vivarium and Library, and at various offices
17 throughout the Hospital, should the County alter or curtail this arrangement, major programs in
18 research and University based services would suffer greatly, compounding the damages caused
19 by the County's contractual breaches.

20 78. Additionally, the loss of the County revenues will result in increased financing
21 costs incurred by The Charles Drew University for construction in an amount to be proven at
22 trial but in no event less than \$600,000.

23 79. Additionally, the loss of the County revenues resulted in the abandonment of the
24 University's financial role in a faculty practice plan building planned for Wilmington Avenue,
25 and the resultant loss of \$6 million in corporate contributions.

26 80. The County's deliberately unlawful action in terminating the Hospital as a
27 teaching facility has further proximately and foreseeably caused The Charles Drew University
28 voluntarily to withdraw the accreditation for its residency program and suspend as of December

1, 2006, the University's residency programs. As a result, approximately 248 residents who were receiving residency training at The Charles Drew University and the Hospital need to be relocated to other institutions. This will be a time consuming and expensive process, and the County has approved no funds to assist in that relocation process. Moreover, The Charles Drew University will incur significant costs and suffer lost opportunities in initiating and rebuilding its residency program over the years, in an amount to be determined at trial, but plaintiff is informed and believes that the amount of damages is no less than \$10 million in addition to the damages alleged above. In addition, as a result of the County's breaches, the Charles Drew University will be forced to pay a greater portion of its residents' salaries, and in some cases all of such salaries, which will result in an approximate loss of another \$10 million in the course of rebuilding the University's residency program.

81. There may well never be an opportunity to return to the 17 programs that the University had spent over 40 years to build. Such is the wreckage of the County's shattered partnership with The Charles Drew University.

82. Moreover, The Charles Drew University has suffered damage to its reputation due to (1) the County's breach of the MSOA; (2) the County's failure to maintain JCAHO accreditation for the Hospital; (3) the County's failure to maintain its Medicare agreement with the federal government; (4) the County's heartless decision to deprive 1.67 million citizens of their legal and moral right to basic medical care; and (5) the County's post-breach of contract tactics that have been deliberately designed to ensure that The Charles Drew University suffers the maximum amount of damage due to the County's breach of the MSOA. By viciously terminating the Hospital as a teaching facility and depriving its least powerful citizens of life – saving medical care in the guise of a bogus "MetroCare Plan," the County Board of Supervisors – and the County's Director of Health Department of Health Services in particular – have knowingly and gratuitously dealt a devastating blow to The Charles Drew University's well known plans (recently endorsed by Governor Arnold Schwarzenegger) for a new four year medical school.

1 83. The County's unexpected and abrupt termination of a full service teaching
2 hospital directly adjacent to The Charles Drew University has caused – and will continue to
3 cause – a loss of status and attractiveness to potential future faculty, staff and students of The
4 Charles Drew University. Many such individuals will erroneously assume that the problems
5 associated with the Hospital are somehow the fault of The Charles Drew University.

6 84. Incredibly, the County is intentionally exacerbating The Charles Drew
7 University's damages in this regard by fomenting chaos in The Charles Drew University's
8 attempts to assist its 248 uprooted residents in finding institutions where they can finish their
9 three-year to five-year specialized studies. Despite requests for help and the fact that the County
10 caused this upheaval by callously setting adrift hundreds of The Charles Drew University's
11 residents, DHS Director has continuously refused to aid the University in this critical task in any
12 meaningful way.

13 85. Beyond that, the County's breaches will inevitably shrink The Charles Drew
14 University's full-time faculty positions and will require the University to reinvent its faculty
15 structure – in all likelihood by hiring practicing physicians who are willing to teach part-time.
16 This will further damage the University's status and prestige.

17 86. In addition, The Charles Drew University's research programs – which have
18 made the University among the fastest-growing research institutions in the country – may well
19 not be maintained because the patients will likely be scattered among other area hospitals.

20 87. The Charles Drew University is informed and believes that, as a result of the acts
21 of the County alleged in paragraphs 82-87 above, The Charles Drew University has suffered
22 damages in an amount to be proven at trial, but in no event less than \$10 million.

23 88. On March 6, 2007, The Charles Drew University presented to the County a claim
24 under the California Gov't Code for the damages The Charles Drew University has suffered and
25 will continue to suffer as a result of the County's wrongful breach of the contract. The County
26 rejected the claim or failed to act on the claim within 45 days, and has still failed to act on the
27 claim as of the filing of the instant complaint. Thus, the County has rejected the claim pursuant
28 to Government Code § 912.4(c).

1
2 **FIRST CAUSE OF ACTION**

3 **BREACH OF WRITTEN CONTRACT**

4 89. The Charles Drew University re-alleges and incorporates by reference herein each
5 of the allegations in Paragraphs 1 through 88 above.

6 90. The MSOA constitutes a written contract between The Charles Drew University
7 and the County.

8 91. The Charles Drew University has complied with all of its obligations under the
9 contract except for those obligations which the County's conduct have made impossible to
10 perform.

11 92. By its actions, the County has breached the written contract, causing substantial
12 damages to The Charles Drew University in an amount to be proven at trial, but plaintiff is
13 informed and believes that the amount of damages is no less than \$125 million.

14 **SECOND CAUSE OF ACTION**

15 **BREACH OF IMPLIED CONTRACT**

16 93. The Charles Drew University re-alleges and incorporates by reference herein each
17 of the allegations in Paragraphs 1 through 92 above.

18 94. Over the decades, the communications and course of conduct between The
19 Charles Drew University and the County have created an implied-in-fact contract between the
20 parties under which the parties would honor the McCone Commission's recommendations and
21 the County's promises to operate a healthcare facility to provide services to the South Los
22 Angeles area.

23 95. Specifically, as alleged more fully above, the County and The Charles Drew
24 University over the past 35 years—by their mutual public and private statements and their
25 consistent course of conduct—have manifested a long term implied-in-fact contract under which
26 each party would provide services and aid to the other in order to fulfill the County's legal and
27 moral responsibilities to provide basic healthcare services to the poor, indigent and underserved
28 of South Los Angeles.

1 96. Under the implied-in-fact contract, The Charles Drew University would utilize
2 the Hospital as a teaching facility for the University’s post graduate medical residency program
3 so that the County could operate the Hospital at a lower cost. However, because this contractual
4 provision required Drew to make a substantial commitment of resources and prestige to the
5 County, the County for its part was obligated to:

6 (a) maintain the Hospital as a safe, accredited hospital that could serve as a certified
7 facility for The Charles Drew University’s research, graduate medical education, and residency
8 programs by maintaining the Hospital’s accreditation under the requirements of the Joint
9 Commission on Accreditation of Healthcare Organizations (“JCAHO”) and the Accreditation
10 Council for Graduate Medical Education (“ACGME”) and by satisfying all other regulations and
11 requirements, including but not limited to eligibility to serve as a Medicare/Medicaid provider;
12 and

13 (b) ensure that any change in the status of the Hospital would be structured so as not to
14 cause The Charles Drew University any damage either to its research, graduate medical
15 education and residency programs, or the University’s status as an educational institution.

16 97. Furthermore, under this implied in fact contract, the County agreed that it would
17 negotiate in good faith with The Charles Drew University so as to enter into successive MSOA
18 contracts that would ensure the continued status of the Hospital as a licensed teaching hospital
19 healthcare facility and the continued stability of The Charles Drew University’s educational and
20 research activities. In fact, the County’s Department of Health Services Director expressly
21 acknowledged The Charles Drew University’s and the County’s historical relationship and the
22 County’s duty to continue the relationship in its May 25, 2006 letter to the County’s Board of
23 Supervisors submitting the 2006 MSOA for approval by the Board. The letter states on the
24 second page that “DHS and The Charles Drew University intend to negotiate a new agreement
25 during Fiscal Year 2006-07. *It is anticipated that negotiations for a new agreement will*
26 *commence immediately following the approval by your Board of Amendment No. 1.*” (emphasis
27 added) The letter further states on page six that “given the nature and scope of the services
28 provided by The Charles Drew University under the Agreement, as well as *the historic*

1 *relationship between the County and The Charles Drew University*, the Department determined
2 it was not feasible to competitively bid this contract.” (Emphasis added) The County never
3 began these negotiations—and may never have intended to negotiate in good faith a long-term
4 contract with The Charles Drew University.

5 98. The Charles Drew University has complied with all of its obligations under the
6 implied-in-fact contract except for those obligations which the County’s conduct have made
7 impossible to perform.

8 99. By its actions, the County has breached the implied-in-fact contract, causing
9 substantial damages to The Charles Drew University in an amount to be proven at trial, but
10 plaintiff is informed and believes that the amount of damages is no less than \$125 million..

11 **THIRD CAUSE OF ACTION**

12 **BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING**

13 100. Plaintiffs re-allege and incorporate by reference herein each of the allegations in
14 Paragraphs 1 through 97 above.

15 101. The written and implied-in-fact contracts between the County and The Charles
16 Drew University each contain an implied covenant by each party not to do anything that will
17 deprive the other party of the benefits of the contract. This covenant imposes upon each party
18 the duty to refrain from doing anything that would render performance of the contract impossible
19 by any act of its own, and the duty to do everything that the contract presupposes that it will do
20 to accomplish the purpose of the contract.

21 102. By its actions above, the County has breached the implied covenant of good faith
22 and fair dealing for both the written and implied-in-fact contract by committing objectively
23 unreasonable acts and omissions and not dealing in good faith and fairly with The Charles Drew
24 University.

25 103. By its actions, the County has breached the covenant of good faith and fair
26 dealing causing substantial damages to The Charles Drew University in an amount to be proven
27 at trial, but plaintiff is informed and believes that the amount of damages is no less than \$125
28 million.

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PRAYER FOR RELIEF

WHEREFORE, The Charles Drew University prays for judgment against the Defendant as follows:

ON THE FIRST CAUSE OF ACTION

- 1. For general damages in excess of \$125 million sustained by The Charles Drew University as a consequence of the County’s breaches of contract with an exact amount to be proven at trial;
- 2. For special damages sustained by Plaintiffs as a consequence of Defendant’s breaches of contract in an amount to be determined at trial;
- 3. For pre-judgment interest; and
- 4. For such other and further relief as the Court deems just, equitable, and proper.

ON THE SECOND CAUSE OF ACTION

- 5. For compensatory damages in excess of \$125 million, with an exact amount to be proven at trial;
- 6. For special damages sustained by Plaintiffs as a consequence of Defendant’s breaches of contract in an amount to be proven at trial;
- 7. For such other and further relief as the Court deems just, equitable, and proper

ON THE THIRD CAUSE OF ACTION

- 8. For compensatory damages in excess of \$125 million, with an exact amount to be proven at trial;
- 9. For special damages sustained by Plaintiffs as a consequence of Defendant’s breaches of contract in an amount to be proven at trial;
- 10. For such other and further relief as the Court deems just, equitable, and proper.

DATED: March __, 2007	O'DONNELL & ASSOCIATES PC
	PIERCE O'DONNELL
	JACK G. CAIRL

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By: _____
PIERCE O'DONNELL
Attorneys for Plaintiff
THE CHARLES R. DREW UNIVERSITY
OF MEDICINE & SCIENCE

DEMAND FOR JURY TRIAL

Plaintiff The Charles Drew University hereby demands a trial by jury.

DATED: March __, 2007

O'DONNELL & ASSOCIATES PC
PIERCE O'DONNELL
JACK G. CAIRL

By: _____
PIERCE O'DONNELL
Attorneys for Plaintiff
THE CHARLES R. DREW UNIVERSITY
OF MEDICINE & SCIENCE